

REMARKS

In the office action mailed March 10, 2003, claims 1 and 2 are rejected under 35 USC §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Claims 1-6, and 11-16 are rejected under 35 USC §103(a) as being unpatentable over Elliott et al. (U.S. patent 6,431,875 B1) in view of Stuppy (US Patent 6,146,148). Claims 8 and 18 are rejected under 35 USC §103(a) as being unpatentable over Elliott et al. in view of Stuppy and in view of Mishkin (U.S. Patent 6,377,781 B1). Finally, claims 9, 10, 19 and 20 are rejected under 35 USC §103(a) as being unpatentable over Elliott et al. in view of Stuppy in view of Siefert (U.S. Patent 6,386,883 B2).

RESPONSE TO REJECTIONS UNDER 35 USC §112

In response to the rejection of claims 1 and 2 under 35 USC §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention, Applicant has amended the claim to more clearly indicate that the method include a step of:

“generating a measure of the question by question variation of each of the class profiles from the normative profile.”

Applicant respectfully submits that claims 1 and 2 now present a new use step comprising of an evaluation method step. Applicant respectfully request that the rejection of claims 1 and 2 be withdrawn.

RESPONSE TO REJECTIONS UNDER 35 USC §103(a)

In response to the rejection of Claims 1-6, and 11-16 under 35 USC §103(a) as being unpatentable over Elliott in view of Stuppy, Applicant has amended the claims to more clearly distinguish over the cited references. In particular, Applicant has amended claims 1 and 2 to include a step of “providing a set of class profiles by test administrator, each class profile indicative of the question by question performance of a respective class on a selected group-

administered test comprising a plurality of questions which are directed to measure the same characteristic." Applicant has also amended claims 1 and 2 to indicate that the step of generating a normative profile indicative of normative class performance on the selected test relates to members of each class which are subject to the direction of the same test administrator on the selected test. Applicant respectfully submits that the claims as amended are allowable over a combination of Elliott and Stuppy.

In particular, Elliott fails to disclose providing a set of class profiles by test administrator, or a class profile indicative of the question by question performance of a respective class on a selected group-administered test comprising a plurality of questions which are directed to measure the same characteristic. Finally, Applicant respectfully submits that Elliot fails to disclose or suggest generating a normative profile indicative of normative class performance on the selected test, where the members of each class included in the normative profile are subject to the direction of the same test administrator on the selected test. Unlike Applicant's invention which addresses generating class profiles by test administrator, as set forth in claims 1 and 2 for example, Elliott addresses problems related to tests administered over the internet. For example, Elliot suggests using certain decoy questions and response times to detect cheating. Stuppy is cited for teaching a system "developing student profiles on a battery of tests that are subject to the direction of a computer administrator, that the tests are scored and norm comparisons are made, and that student results are tracked and managed by the computer administrator." However, Stuppy is directed to a system for tracking individual students performance against a norm, not (i) comparing each of the class profiles with a normative profile, as required in claim 1, or (ii) identifying individual ones of the class profiles that deviate excessively from the normative profiles on a question-by-question basis, as required in claim 2, or (iii) evaluating administration of the selected test based on the comparison of each of the sub-group profiles with the normative profiles on a question by question basis, as required in claim 11.

In particular, Stuppy discloses a system where a student takes the assessment test and answers electronically using the pen or other input device, and the answers are scored electronically so that the student's initial assessment is free of scoring and administration errors. The student may also receive a battery of tests which are generally designed to identify the ability to perform different tasks or the mastery of certain learning objectives or skills. The assessment tests are scored and analyzed by computer to generate a student profile which is then

utilized by the system of Stuppy to generate a learning program suited to that student and deliver electronic student workbooks. The student profile contains, among other data, skill gaps which need to be filled by further instruction. Ongoing assessments during the use of the system are used to expand and update the profile. (Col. 4, lines 52-57). However, neither reference discloses any evaluation based upon class profiles or sub-group profiles as claimed by Applicant. More importantly, neither would lead anyone knowledgeable in the field to generate group profiles because of the mathematical inconsistency of such a process. In Stuppy, adding the profiles would be adding total test scores and would eventually result in simply finding the average score for each test. In Elliott, adding the profiles would mean adding different information on different test items (response times on some items and success with other, 'decoy' items, for example) along with elements of personality and forecasts of employment success - which would clearly result in a meaningless set of values. Neither Stuppy or Elliott or any combination of them could lead to the present invention. Accordingly, Applicant submits that any combination would not lead to Applicant's invention as claimed.

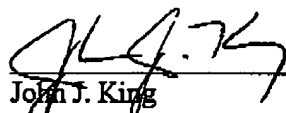
In response to the rejection of Claims 8 and 18 under 35 USC §103(a) as being unpatentable over Elliott et al. in view of Stuppy and in view of Mishkin, Applicant respectfully submits that these claims are clearly allowable over the cited art for the same reason that independent claims 1, 2 and 11 are believed allowable. Mishkin is cited as teaching that individual profiles may be accumulated into larger units as defined by sessions for entire classes and groups of classes, including any sub-grouping desired based upon the number of sessions taking the same quiz. Mishkin suggests accumulating "quiz data" (Col. 4, 50-59) and fails to disclose providing a set of class profiles by test administrator or providing sub-groups comprising a plurality of individuals whose test item responses are exposed to a common external influence as claimed by Applicant. Accordingly, any combination of the references would not lead to Applicant's invention for the same reasons set forth above.

Finally, in response to the rejection of Claims 9, 10, 19 and 20 under 35 USC §103(a) as being unpatentable over Elliott et al. in view of Stuppy and in view of Siefert, Applicant also respectfully submits that these claims are clearly allowable over the cited art for the same reason that independent claims 1, 2 and 11 are believed allowable. Siefert, which is directed to a computer assisted education program, also fails to disclose providing a set of class profiles by test administrator or providing sub-groups comprising a plurality of individuals whose test item

responses are exposed to a common element affecting test administration, as claimed by Applicant. Accordingly, any combination of the references would not lead to Applicant's invention for the same reasons set forth above.

In view of the above amendments and remarks, and the attached Affidavit under 37CFR §1.132, Applicant respectfully requests reconsideration of the claims.

Respectfully submitted,


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